the second prosecution should not be construed as a continuation of the first prosecution. The appellate judge then gave an interpretation of section 15(4) (b) of the Copyright Act in the following terms appearing at page 3 of his judgment:

"In my view the intention of the legislature in enacting section 15(4) (b) of the Copyright Act is that after the infringing copies are seized by the police under a search warrant issued by a magistrate proceedings for any offence under section 15(1) must be instituted within six months of the seizure. If no proceedings are instituted within the six months the copies have to be returned to the person from whom they were seized or be dealt with in accordance with the provisions of section 15(4) of the Copyright Act."

The appellate judge then concluded that as the second proceeding was not instituted within six months provided by section 15(4), the magistrate's court had no jurisdiction to take cognisance of the offence.

In our view it is not important for the purpose of determining the proper construction of section 15(4) of the Copyright Act to construe whether the second prosecution in this case was a *continuation* of the first prosecution. A careful reading of section 15(4) will show that the provision deals with the central question of disposal of contrivance or infringing copies and not with prosecution. It is clear from the provision that where after a prosecution no order is made by the court on the infringing copy or contrivance, the copy or contrivance shall be returned to the person from whom it was seized. If this is not practicable, the copy or contrivance should be disposed of in accordance with the law regulating the disposal of lost or unclaimed property in the hands of police authorities – paragraph (a) of section 15(4). Where, however, no prosecution is instituted within six months of the seizure of the copy or contrivance, the copy or contrivance shall also be returned or disposed of in the same manner as set out earlier – paragraph (b) of section 15(4).

In the present case the first prosecution was instituted on November 27, 1981 which was well within six months of the date of the seizure which was July 16, 1981. Therefore paragraph (b) of section 15(4) of the Act was already satisfied. The fact that the accused was discharged not amounting to an acquittal subsequently did not affect the operation of section 15(4) of the Act.

As regards paragraph (a) of section 15(4) of the Act it can be seen from the facts set out earlier that the proceeding did not really come to an end. The reason for the application for adjournment was not because the prosecution did not elect to proceed with the case but because an important witness could not be served with a subpoena. In our view paragraph (a) envisages a finality in the proceeding which is not the case here. Any order made would be in pursuance of the power given by sub-section (2) of section 15 where it is expressly provided that the court may *at the conclusion of the trial* whether the alleged offender is convicted or not order the disposal of the infringing copies or contrivance (emphasis provided).

The central subject of section 15(4) of the Copyright Act 1969 is the return or disposal of the infringing copies or contrivance seized under that provision. It would be wrong to construe section 15(4) of the Act as a provision laying down a timetable for prosecution.

The answer to the question posed is therefore in the negative.

Question answered.

Solicitors: *Asbir, Hira Singh & Co.*

STATE GOVERNMENT OF PERAK v. MUNIANDY

[S.C. (Abdul Hamid C.J. (Malaya), Hashim Yeop A. Sani & Abdoolcader S.C. JJ.) January 21, & December 7, 1985]

[Ipoh – Supreme Court Civil Appeal No. 258 of 1983]

Tort – Negligence – Vicarious liability – Driver driving in course of employment – Duty to persons carried on vehicle – Whether any prohibition to carry passengers – Pleadings.

Practice and Procedure – Pleadings – Parties bound by them.

In this case the respondent, who was an employee of the appellant, hitched a ride in a lorry belonging to the appellant and driven by an employee of the appellant. The driver was on duty at the time and was driving the lorry in the course of his employment. The respondent was going home to hand over his pay to his wife. On the way the lorry met with an accident and the respondent was injured. The driver of the lorry admitted liability and also admitted that he did not object to the respondent taking a lift on the lorry and he did not tell the respondent that he could not ride on the lorry. The learned trial judge held that the appellant was vicariously liable. The appellant appealed.

Held: it was not pleaded in this case that there was a prohibition affecting employees of the appellant and that the driver had allowed the respondent to travel in the lorry in breach of such prohibition. Parties are bound by their pleadings and the appellant should not, on the admitted facts of the case, be allowed to avoid vicarious liability merely on the bare fact that there was an administrative circular relating to the prohibition.

Cases referred to:

(1) *Twine* v. *Bean's Express Ltd.* [1946] 1 All E.R. 202.
(2) *Conway* v. *George Wimpey & Co. Ltd.* [1951] 1 All E.R. 363.
(3) *Rose* v. *Plenty & Anor.* [1976] 1 All E.R. 97.
(4) *Samin bin Hassan* v. *Government of Malaysia* [1976] 2 M.L.J. 211.
(5) *Chuan Seng & Co. Pineapples Factory* v. *Idris & Anor.* [1962] M.L.J. 239.

SUPREME COURT.

Ariffin bin Zakaria, State Legal Adviser, for the appellant.

Jagdis Singh Sandu for the respondent.

Hashim Yeop A. Sani S.C.J. (delivering the Judgment of the Court) : We dismissed the appeal on January 21, 1985 and now give our reasons.

The following facts were admitted in the court below. On March 15, 1979 the respondent, Muniandy s/o Appasamy who was an employee of the appellant, hitched a ride in a JKR lorry no. WL 6677 driven by one Tan Loke, a JKR driver and also an employee of the appellant. The lorry was travelling from Taiping to Kampar. The lorry belongs to the appellant.

The respondent was at the material time working in Taiping and was going home to Kampar to hand over his pay to his wife. On the way the lorry met with an accident and the respondent was injured. Tan Loke, the driver, admitted liability. Tan Loke also admitted that he did not object to the respondent taking a lift on the lorry and he did not tell the respondent that he could not ride on the lorry. Tan Loke was on duty at the material time and was driving the lorry in the course of his employment.

From the record it would seem clear that the only issue before the trial judge was whether the appellant was vicariously liable.

Twine v. *Bean's Express Ltd.*(1) lays down the rule that the duty of a driver's employers to take care was only to persons who might reasonably be anticipated by them as likely to be injured by the negligent driving of the vehicle by their employee. In that case it was agreed that the employers accepted no responsibility for injury sustained by persons riding in the vehicle who were not in their employment. There was also an expressed instruction issued to their drivers that no one should be allowed to travel on their vehicles. In the circumstances of that case the court held that *T* was a trespasser in the vehicle and that the employers owed no duty to him because they could not reasonably anticipate that he would be a passenger in the vehicle at the time of the accident. *Twine* v. *Bean's Express Ltd.* was considered and affirmed by the Court of Appeal in *Conway* v. *George Wimpey & Co. Ltd.*(2)

In *Conway* v. *George Wimpey & Co. Ltd.* not only was the driver of the vehicle given clear oral instructions not to take any passengers but in the cab of each lorry was a notice indicating that the driver was under strict orders not to carry passengers other than employees of the company and anyone driving on the vehicle did so at his own risk. In that case too the passenger injured was held to be a trespasser and that the driver's employers were not under any duty of care to him.

In *Rose* v. *Plenty & Anor.*(3) the Court of Appeal again had the opportunity of considering *Twine* v. *Bean's Express Ltd.* and *Conway* v. *George Wimpey & Co. Ltd.* (*supra*). Scarman L.J. (as he was then) in the course of his judgment dealt with the question of vicarious liability clearly at page 103 where he said:

> "I think it important to realise that the principle of vicarious liability is one of public policy. It is not a principle which derives from a critical or refined consideration of other concepts in the common law, e.g. the concept of trespass or indeed the concept of agency. No doubt in particular cases it may be relevant to consider whether a particular plaintiff was or was not a trespasser. .....
>
> But basically, as I understand it, the employer is made vicariously liable for the tort of his employee not because the plaintiff is an invitee, nor because of the authority possessed by the servant, but because it is a case in which the employer, having put matters into motion, should be liable if the motion that he has originated leads to damage to another."

In the instant case the trial Judge correctly distinguished *Samin bin Hassan* v. *Government of Malaysia*(4) in that the driver in that case was at the material time not driving as a servant or agent of the government but was driving for his own purpose.

Purporting to rely on *Twine* and *Conway* the appellant in their statement of defence averred that the respondent was on the said JKR lorry at the time of the accident "without the express or implied authority of the appellant" and that the respondent boarded the lorry to deliver money to his wife which was a personal matter and not connected with his employment. It would appear from the record of the proceedings before the trial Judge that the appellant attempted to introduce evidence relating to a certain administrative circular dated December 29, 1969 which prohibited all employees from boarding government vehicles without permission. DW2, a JKR supervisor, however, admitted in his evidence that he himself never saw this administrative circular at any time before the hearing. The learned Judge noted that the statement of defence never pleaded that –

(1) There was such a prohibition affecting employees of the appellant; and

(2) The driver had allowed the respondent to travel in the lorry in breach of the prohibition.

Parties are bound by their pleadings and we do not think that the appellant should on the admitted facts of this case be allowed to avoid vicarious liability merely on the bare fact that there was such an administrative circular relating to the prohibition.

Finally, we do not think that the appellant can rely on *Chuan Seng & Co. Pineapples Factory* v. *Idris & Anor.*[5] because there the Court of Appeal held the view that the trial Judge had misdirected himself when he said that "it did not matter whether the deceased were trespassers or invitees" and the Court of Appeal took the view that on the evidence they were clearly trespassers.

Appeal dismissed with costs.

Appeal dismissed.

Solicitors: *Sandu & Co.*

PALMCO HOLDINGS BHD. v. COMMISSIONER OF LABOUR & ANOR.

[S.C. (Lee Hun Hoe C.J. (Borneo), George Seah & Hashim Yeop A. Sani S.C. JJ.) October 31 & December 9, 1985]

[Kuala Lumpur – Supreme Court Civil Appeal No. 111 of 1985]

Labour Law – Termination benefits – Whether regulations ultra vires – Powers of Court – Employment (Termination and Lay-off Benefits) 1980, reg. 8 – Employment Act, 1955, s. 60J.

In this case the appellant had bought over the business of a beach hotel in Penang from the Casuarina Beach Hotel Sdn. Bhd. It was agreed *inter alia* that the plaintiff would offer employment to all existing employees of the hotel except five persons who had passed the retirement age and were relatives of the family who were the former owners of the hotel. The five persons applied to the Director of Labour for termination benefits but the hearing of the application was adjourned to enable the appellant to challenge the *vires* of regulation 8 of the Employment (Termination and Lay-off Benefits) Regulations, 1980. It was argued that the regulation was *ultra vires* as it sought to impose liability on persons other than employers and therefore contravened section 60(J) (1) of the Employment Act, 1955, which only enables the Minister to make regulations for the payment of termination, lay-off and retirement benefits by employers. The learned trial judge held that regulation 8 was not *ultra vires* the Employment Act, 1955 – see [1985] 2 M.L.J. 262. The appellant appealed.

Held, allowing the appeal: it is clear that the powers conferred by section 60J(1) and (2) of the Employment Act, 1955 are not wide enough to cover a person who is not an employer. Regulation 8(2) of the Employment (Termination and Lay-off Benefits) Regulations 1980 is *ultra vires* the Employment Act, 1955, to the extent only that it purports to impose a liability on persons in the situation of the appellant in this case.

[**Editorial Note**: In *Palmco Holdings Bhd.* v. *Commissioner for Labour & Anor.* [1985] 2 M.L.J. 263, we reported that four persons applied to the Director of Labour for termination benefits. However, we are informed by the Honourable Tan Sri Datuk Hashim Yeop A. Sani that "Five and not four persons lodged the claims for termination benefits. This figure is based on the affidavit in support of the application in the High Court and also according to the summons No. 43/82 in the Labour Court which referred the complainants as 'Lau Eng Thean dan 4 orang lain'."]

Cases referred to:

(1) *Carltona Ltd.* v. *Commissioners of Works* [1943] 2 All E.R. 560.
(2) *Lewisham B.C.* v. *Roberts* [1949] 2 K.B. 608.
(3) *Minister of Agriculture & Fisheries* v. *Matthews* [1950] 1 K.B. 148.
(4) *Mc Eldowney* v. *Forde* [1971] A.C. 632, 658.
(5) *Hoffmann-La Roche* v. *Secretary of State* [1974] 2 All E.R. 1128.
(6) *Young* v. *Tockassie* (1905) 2 C.L.R. 470.
(7) *Kumpulan Kamuning Sdn. Bhd.* v. *Rajoo & Ors.* [1983] 2 M.L.J. 400.
(8) *Morton* v. *Union Steamship Co. of New Zealand Ltd.* (1951) 83 C.L.R. 402.
(9) *Dunkley* v. *Evans & Anor.* [1981] 3 All E.R. 285.

SUPREME COURT.

C.V. Das for the appellant.

P.M. Mahalingam (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.